TWENTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE (1980-81)

(SEVENTH LOK SABHA)

RAILWAY EXPENDITURE

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

[Action taken on 136th Report (Sixth Lok Sabha)]

Presented in Lok Sabha on.....

Laid in Rajya Sabha on.....

LOK SABHA SECRETARIAT
NEW DELHI

March, 1981/Phalguna, 1902 (S)

Price : Rs. 2.60

Corrigenda to the Twentieth Report of Public Accounts Committee (Seventh Lok Sabha)

Page	Para	Line	For	Read
(v)	1	12	repartmén.al	departmental
(v)	1	20	implemntation	implementation
7	1.10	13	considered	considering
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8	1.13	16	in fluenced	influenced
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21	-	12th from bottom	offeCr	offer
26	-	1	was	has
26	1.91	3	recommended	recommend
28	-	5th from bottom	vrm	firm
29	-	6	add "not" after	"have"
29	-	7	add "was" after	"which"
29	-	5th from bottom	off	of
33	2.6	3	grm	firm
34	6	3	gnn	firm
34	6	4th from bottom	nothing	notings
48	-	9th from bottom	collapse	collapsed
50	S.No.1	-	1.13	1.3
52	-	2	add "any" after	"make"
52	-	14	sylinders	cylinders.

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PUBLIC ACCOUNTS COMMITTEE (1980-81)

CHAIRMAN

Shri Chandrajit Yadav

M

MEMBERS

Lok Sabha

2. Shri Satish Agarwal
3. Shri Subhash Chandra Bose Alluri
4. Shri Tridib Chaudhuri
5. Shri K. P. Singh Deo
6. Shri V. N. Gadgil
7. Shri Ashok Gehlot
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Rajya Sabha

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22. Shri Indradeep Sinha

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1. Shri H. G Paranjpe—*Joint Secretary,*
2. Shri D. C. Pande—*Chief Financial Committee Officer.*
3. Shri T. R. Ghai—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Twentieth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 136th Report (Sixth Lok Sabha) on Railway Expenditure. In the 136th Report, the Committee after reviewing a contract entered into by Diesel Locomotive Works Administration, Varanasi with Industrial Cases Ltd. for supply of oxygen and acetylene gases had highlighted certain irregularities in the deal and had recommended that the whole case might be investigated. In this Action Taken Report, the Committee after scrutiny of the action taken reply and the report of the repartmental Committee which was set up to investigate the whole case have observed that the Ministry of Railways in their action taken note have not reflected properly the lapses pointed out by the departmental committee. The Committee have also recommended that the Railway Board should issue necessary instructions to ensure that the interests of the Government are adequately safeguarded while entering into contracts of similar nature and that prescribed procedures are followed in settling disputes arising from the implemtntation of contracts.

2. On 20 August, 1980, the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the PAC in their earlier Reports:

Chairman

Shri Chandrajit Yadav

Members

2. Shri K. P. Unnikrishnan
3. Shri K. P. Singh Deo
4. Shri V. N. Gadgil
5. Shri Satish Agarwal
6. Shri N. K. P. Salve

3. The Action Taken Sub-Committee of the Public Accounts Committee (1980-81) considered and adopted the Report at their sitting held on 19 March, 1981. The Report was finally adopted by the Public Accounts Committee (1980-81) on 28 March, 1981.

4. For reference facility and convenience, the recommendations and observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in the Appendix to the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in this matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;

29 *March*, 1981

8 *Chaitra*, 1903 (*S*)

CHANDRAJIT YADAV,

Chairman,

Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the recommendations and observations of the Committee contained in their 136th Report (Sixth Lok Sabha) which was presented to the Lok Sabha on 30 April, 1979 on paragraphs relating to Railway Expenditure included in the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Railways).

1.2. Action Taken Notes in respect of all the 26 recommendations or observations contained in the Report have been received from the Government and these have been categorised as follows:—

(i) *Recommendations or observations that have been accepted by Government*:

Sl. Nos. 16—22

(ii) *Recommendations or observations which the Committee do not desire to pursue in the light of the replies received from Government*:

Sl. Nos. 24—26

(iii) *Recommendations or observations replies to which have not been accepted by the Committee and which require reiteration*:

Sl. Nos. 1—14

(iv) *Recommendations or observations in respect of which Government have furnished interim replies*:

Sl. Nos. 15 and 23.

1.3. The Committee hope that final replies to those recommendations or observations in respect of which only interim replies have been furnished so far will be submitted expeditiously after getting them vetted by Audit.

1.4. The Committee will now deal with the action taken by Government on some of their recommendations.

Diesel Locomotive Works—Supply of Oxygen and Acetylene Gases.
(*Paragraphs* 1.81 *to* 1.94 *S. Nos.* 1—14)

1.5. While reviewing a contract entered into by Diesel Locomotive Works Administration with a firm for supply of oxygen and acetylene gases in paragraphs 1.81 to 1.90 of their 136th Report (6th Lok Sabha), the Committee had observed the following irregularities in its award, operation and extension:—

(i) The Railway Administration had accepted a belated offer from M/s. Industrial Gases Ltd. and this action showed that the Railway Administration was keen to bring in the Industrial Gases Ltd.

(ii) The Railway Administration did not make any proper evaluation of the relative superiority of the two offers received i.e. those of Industrial Gases Ltd. and Indian Air Gas Ltd. taking into account provision of facilities like land, water, electricity etc.

(iii) The proposal of DLW Admn. for installation of a gas plant was shelved as a consequence to the award of the contract to the firm.

(iv) The Administration provided many facilities to Industrial Gases Ltd. like leasing of land, provision of surface drainage, supply of water and electricity etc. without safeguarding the interest of the Administration. Although the initial supply contract period was 10 years, facilities were to be made available to the firm for a period of 30 years.

(v) One of the terms of the contract provided that in cases the minimum offtake stipulated was found to be in excess of the requirement of DLW, assistance of the firm was to be sought for selling the excess quantity and the firm had the option to discharge the unlifted quantity of gases into the air on DLW's account, in case no ready customer was available. Though DLW has not been able to lift the minimum guaranteed offtake throughout the 10-year period, except in 1966, the Administration never asked for assistance of the firm for disposal of surplus gases. Further, the Administration did not undertake any verification of actual production of gases and the discharge of the gases into the air.

(vi) The agreement was one-sided and clearly biased in favour of the firm enabling the firm to make maximum use of the provision of the agreement to extract maximum benefits which dragged the Administration into no less than 5 arbitrations.

(vii) The DLW Administration extended the contract with M/s. Industrial Gases Ltd. for a further period of 7 years in May 1976 on the same terms and conditions of the original contract except slight reduction in the quantity of minimum offtake of gases without learning any experience with that firm for more than 10 years.

1.6. The Committee had therefore, recommended in para 1.91 of the Report:—

"The foregoing paragraphs make an unsavoury reading and give rise to suspicion about the bona fides of the whole arrangement. The Commitee would, therefore, recommend that the whole cases may be investigated so as to identify the persons who were responsible for showing undue favour to this firm."

1.7. Further, referring to the serious and costly lapse, including wasteful legal expenditure due to the negligence on the part of Diesel Locomotive Works Administration in appointing the arbitrator within the stipulated time, the Committee had, in Paragraph 1.94 of the Report observed:—

"Explaining the reasons for not appointing the arbitrator within the stipulated time, the Ministry of Railways have stated that the expectation then was that the matters under dispute would be settled amicably by discussions which were then in progress. Prima facie this is not a satisfactory explanation because the nomination of an arbitrator could not have in any way precluded or prejudiced the discussions with the firm which were stated to be in progress at that time. The Committee are of the view that the Administration had miserably failed to exercise its right to appoint its arbitrator in proper time. The Chairman, Railway Board during the course of his evidence before the Committee conceded that there has been negligence in this case. The Committee desire that responsibility for this serious and costly lapse, including wasteful legal expenditure, should be fixed."

1.8. The Ministry of Railways (Railway Board) have in their final Action Taken Note dated 11 September, 1980 stated as follows:—

"In pursuance of the recommendations of the Public Accounts Committee, the Ministry of Railways appointed a Committee consisting of Adviser Finance, Adviser Industrial Relations and Director Railway Stores to investigate and report on this case.

The Committee have since completed its enquiry and has come to the conclusion that no malafides were involved either in the award of this contract or in its operation or in its extension beyond 31 December, 1975. As regards the non-appointment of an Arbitrator in time the loss incurred as a consequence, was of a small order though all sincere efforts were made by the DLW Administration to settle the dispute with the firm by mutual discussions. The reasons given by the enquiry Committee in coming to the conclusions stated above are as follows:—

(i) The award of the contract to M/s. Industrial Gases Limited by DLW was in order. This is because the established suppliers M/s. Indian Oxygen Limited were not interested in supply of these gases to the DLW outside the D.G.S.&D. rate contract. The award of the contract to the Indian Oxygen Ltd. in case this was possible, would have meant transportation of Gas cylinders from the firm's plant at Kanpur. This would not have guaranteed uniform availability of an item which was of vital importance to loco production at DLW.

(ii) It is a fact that Industrial Gases Ltd. gave a belated offer and this was given due consideration. Procedurally, there is no objection to accepting a late offer if it is to the advantage of the administration and under conditions of limited competition. Further, the offer of M|s. Industrial Gases Ltd., was found to be attractive as compared to the other offer of M/s. Indian Air Gases. The Committee found no evidence on record to indicate any undue influence being brought on DLW administration in favour of Industrial Gases Ltd. There is no evidence to show that the Administration was favourable towards Industrial Gases Ltd.

(iii) A major facility extended to Industrial Gases Ltd. was the lease of DLW's land for 30 years with supply of

electricity and water. The other firm viz. Indian Air Gases Ltd. did not ask for such a lease as it had purchased land on Mughalsarai-Varanasi road. Therefore, supply of facilities like electricity and water by DLW would not have been of any significance to this firm or in the rate of gases offered by them. The Committee, therefore, did not find any evidence of extraneous considerations having influenced the award of the contract to Industrial Gases Ltd.

(iv) The stipulation about the minimum guaranteed offtake of gases was accepted because Asiatic Oxygen Ltd. had also insisted on it. No company would set up a new unit without being guaranteed of a minimum production. Since the DLW's minimum requirements from 1-1-1968 were less than the capacity installed, the firm had to be given a free hand to dispose of the excess production. The Committee did not find anything unusual in this. The D.L.W. administration did not consider it appropriate to undertake detailed verification of the production/distribution of gases by the said firm, since this course of action could have prejudiced the operation of Force Majeure Clause.

(v) As regards extension of the contract, only two tenders were received *viz.* from Indian Air Gases Limited and Industrial Gases (Bihar) Pvt. Ltd. The rates offered by both these firms were found much more than the rates stipulated in DLWs. original contract. A Study of the financial implications showed that the extension o fthe contract beyond December 1975 was favourable to the administration as compared to other alternatives. Before extension contract was finalised M/s. Industrial Gases Ltd. had agreed to reduce the minimum guaranteed offtake quantity and also to the fixation of the prices by the Chief Cost Accounts Officer of the Ministry of Finance on the basis of current production costs. The Committee is of the view that action resorted to by DLW administration was not unusual.

(vi) The Inquiry Committee have come to the conclusion that the failure on the part of DLW administration to appoint an Arbitrator in time did not result in any substantial loss. They have concluded that except for an amount of Rs. 4.3 thousands the balance awarded by the Sole Arbitrator was in any case payable to the firm

in terms of the various stipulations of the agreement with the firm. The Committee have concluded that non-appointment of an arbitrator in time appears to have been normal due to the impression in the minds of the then General Manager and FA & CAO that the firm would be agreeable to settle the disputes by mutual discussions. The General Manager concerned is now dead. At this stage it is not possible to get any intention about his thinking on the subject. As far as the FA & CAO is concerned, the Committee is of the view that there is no malafide on his part. In regard to the legal expenses the decision to go for filing of suit was of the General Manager and not of the FA & CAO.

Summing up, the Enquiry Committee has come to the conclusion that no officer is to be held responsible in this case."

1.9. At the instance of the Committee, the Ministry of Railways (Railway Board) have furnished a copy of the Report of the departmental committee appointed by the Railway Board (Annexure), Expressing their views on the points raised by the Public Accounts Committee, the enquiry committee in para 7 of their report of the enquiry has *inter alia* stated:

".....It is true that the value of the various facilities made available to the Industrial Gases Ltd. was not evaluated in terms of money value and taken into account in working out the comparative position of the rates of the two firms finally left in the field, namely, the Industrial Gases Ltd. and the Indian Air Gases Ltd.....

.....The availability of the source of Industrial Gases Ltd. close to the DLW plant as a long term source of supply of oxygen and DA gases appears to have no doubt influenced the Administration's thinking of going in for a plant of their own for such gases.....

.....The facilities made available to the Industrial Gases Ltd. may not be considered to be of significance except for the loss of land, the supply of electricity and water and non-provision of revision of rent for such lease. The Administration could have bargained for a lesser period of lease or at least for tying up the period of lease with

the period of currency of supply of gases by the firm to DLW. The provision of supply of water and electricity could also be on similar lines as for lease for land mentioned above. The rent for the lease could be similarly linked with the period of supply of gases to DLW....."

1.10. The Enquiry Committee in para 14 of the Report has also observed:—

".....Out of the amount of award of Rs. 2.01 lakhs, including cost of suit etc., the claim towards rent on cylinders, price escalation on lifted quantity of gas and the sales tax due on such amount were in any case to be paid to the firm as the agreement stipulated payment of price escalation and rent on cylinders.

.....Considering, however, the fact that the agreement stipulated payment for the minimum stipulated quantity by DLW to the firm even if the quantity of gas lifted was less than such stipulated minimum quantity and also considered the notings in the gle at the time of entering into the agreement dealing with this particular stipulation, it cannot be said wih any degree of certainly that the firm is not entitled to such payment.

1.11 The Enquiry Committee in their Report has also stated:

"There does not appear to have been any malafides in awarding the contract to the Industrial Gases Ltd.....

.....The doubts and suspicions appear to be the result of certain technical requirements of laid down procedures having not been fully complied with while dealing with the matter including the award of the contract, some of which are mentioned below:

(a) The tenders received on different dates were considered without treating the tenders received at later dates as 'late' tenders.

(b) All discussions/negotiations with the bidders having not been conducted by the Tender Committee at the same time and in accordance with the established procedure.....

.....The Committee are of the view that the procedures adopted have arisen mainly out of the anxiety for putting the new project on its foot, and do not see any *malafide* at any state.....

....the DLW Administration had made the FA&CAO responsible for commercial work (contracts etc.), which is normally dealt with by the Controller of Stores. The FA&CAO normally acts as a second check on a contract. Following this procedure, the second check was obviously diluted and resulted in certain omissions."

1.12. The Committee note that in pursuance of their recommendation, the Ministry of Railways appointed a departmental committee on 22 June, 1979 to investigate the whole case of the award, operation and extension of the contract entered into by Diesel Locomotive Works Administration with M/s. Industrial Gases Ltd. for the supply of oxygen and acetylene gases and the report of the enquiry was submitted to the Railway Board on 26 April, 1980. The departmental committee has come to the conclusion that no malafides were involved either in the award of the contract or in its operation or in its extension beyond 31 December, 1975.

1.13. After perusal of the report of the enquiry, which was furnished by the Ministry of Railways at the Committee's instance only, the Committee note that the departmental committee has pointed out certain lapses in the deal, some of which were already highlighted by the Public Accounts Committee in their earlier Report. The Committee would like to point out that the Ministry of Railways should have also incorporated in the action taken note those lapses pointed out by the departmental committee. For example, in paragraph 7 of their report the departmental committee has found that "it is true that the value of the various facilities made available to the Industrial Gases Ltd. was not evaluated in terms of money value and taken into account in working out the comparative position of the rates of the two firms finally left in the field" and "the availability of the source of Industrial Gases Ltd. close to the DLW plant as a long term source of supply of oxygen and DA gases appears to have no doubt in fluenced the Administration's thinking of going in for a plant of their own for such gases." It has also been pointed out by the departmental committee in the same paragraph that the Administration could have bargained in respect of certain facilities made available to M/s. Industrial Gases Ltd. Further, in their report the enquiry committee has also concluded that certain technical requirements of laid down procedures were not fully complied with while dealing with the matter. The enquiry committee also observed that the FA&CAO, who 'normally acts as a second check on a contract' was made responsible for the commercial work (contracts etc.); the second check was thereby 'obviously diluted and resulted in certain omissions'.

1.14. The Committee regret that the action taken reply furnished by the Ministry of Railways does not make any apparent reference at all to the above lapses pointed out by the departmental enquiry committee. The conclusion of the enquiry committee regarding the failure of DLW Administration to appoint an Arbitrator in time has not also been properly brought out in the action taken reply. The conclusions of the enquiry committee have been indicated in the action taken reply as to include, inter alia, that 'except for an amount of Rs. 4.3 thousands the balance awarded by the Sole Arbitrator was in any case payable to the firm in terms of the various stipulations of the agreement with the firm'. However, from the report of the enquiry committee it is observed that they have concluded that out of Rs. 2.01 lakhs (including cost of suit etc.) awarded by the Sole Arbitrator, certain claims like rent on cylinders, price escalation, sales tax etc. were in any case payable to the firm in terms of the various stipulations of the agreement, while it cannot be said with any degree of certainty that the firm was not entitled to payment for the gas alleged to have been blown off in the air. The Committee take a serious view of this and desire that in future while furnishing information to the Committee the Ministry of Railways would take adequate care to ensure that the requisite information is correct and complete in all respects.

1.15 The Committee also recommend that whenever an Enquiry Committee is appointed by Government in pursuance of any recommendations of the Public Accounts Committee a copy of the report of such Enquiry Committee should invariably be furnished to the Committee immediately on its receipt without waiting for any reference from the Lok Sabha Secretariat. The Committee also recommend that while furnishing the action taken notes, the findings of the Enquiry Committee should be correctly reflected therein.

1.16. The Committee desire that the Ministry of Finance who have constituted a Monitoring Cell to monitor the implementation of recommendations of the Public Accounts Committee should issue general instructions to all the Departments to ensure the fulfilment of above objective.

1.17. The Committee in para 1.94 of the Report had desired that the responsibility for the failure in appointing an arbitrator within the stipulated time and the consequent wasteful legal expenditure thereon should be fixed. The Chairman, Railway Board had also conceded during the course of the evidence before the Committee

that there had been negligence in this case. The Committee note that the departmental committee which looked into the matter has arrived at the conclusion that the non-appointment of arbitrator within the stipulated time appeared to have been mainly due to the impression in the minds of the then General Manager and the FA&CAO, that the firm would be agreeable to settle the disputes by mutual discussions. The Enquiry Committee have in their report stated that the General Manager, under whose direction the then FA&FAO dealt with the case, died long back, and it was his decision to go for filing of suit. According to the findings of the enquiry, there was no malafide on the part of FA&CAO. It, however, looks strange to this Committee as to how the FA&CAO could thus be completely exonerated as he was closely associated with the General Manager, at various stages of the deal.

1.18. The Committee desire that in the light of the lapses pointed out by the Committee and the findings of the departmental enquiry in this case, the Railway Board should issue necessary instructions to ensure that the interests of the Government are adequately safeguarded while entering into contracts of similar nature. The Committee also recommend that the Railway Board should ensure that the prescribed procedures are followed in setting disputes arising from the implementation of contracts and wasteful expenditure in arbitration cases is avoided.

CHAPTER II

RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendations

2.80. The Committee find that in November 1967, the Railway Board sanctioned an abstract estimate for Rs. 83.68 lakhs (with a foreign exchange content of Rs. 35.94 lakhs) for the work of provision of 24 channel microwave link between New Delhi and Mughalsarai. The global tenders invited by the Northern Railway Administration in January 1968 on a turn-key basis for multi-channel microwave system envisaged provision of standby equipment at the terminals as well as at all the repeater stations with a view to obtain a reliability figure of 99.9 per cent. The lowest tender was that of a firm in Belgium (M/s. Bell Telephones) which provided for complete standby arrangements at the 23 hops on the New Delhi-Mughalsarai microwave link. Taking into account the lowest tendered rates, the Tender Committee recommended the award of the work to the Belgium firm at an estimated cost of Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. However, while according its approval in December 1968 to the placement of order on the lowest tenderer namely the Belgium firm, the Railway Board fixed the total value of the contract at Rs 80.91 lakhs with a foreign exchange component of Rs. 47.51 lakhs, with a view to ensuring that there was no further revision of the estimate.

2.81. The Committee find that the reduction of the order of Rs. 7.96 lakhs (Foreign exchange content being Rs. 6.35 lakhs) made by the Railway Board in the estimates forwarded by the Northern Railway, became possible by restricting the provision of standbys at 10 out of the 23 hops envisaged on the system. However, in 1972 even before the New Delhi-Mughalsarai microwave system had been commissioned, the Northern Railway Administration felt that to obtain the maximum benefit of the reliability for which this system had been planned, standby equipment would have to be provided in all the remaining 13 hops also, which had been deliberately left out in the contract concluded in February 1970. This was approved by the Railway Board in July—October 1972 and the

additional standby equipment was obtained at a cost of Rs. 23.43 lakhs. The procurement of standby equipment then entailed an additional expenditure of Rs. 10.28 lakhs because of the escalation of prices since the execution of the principal agreement with the Belgium firm in February 1970. The Committee consider that the decision of the Railway Board to restrict the standbys to 10 hops was technically unsound and indefensible and in disregard of the degree of reliability to be achieved *i.e.* 99.9 per cent.

2.82. In justification of the Railway Board's decision to restrict the provision of standbys at only 10 out of the 23 hops, the following two reasons have been given:

(1) The reduction in the number of standbys was a deliberate, considered and thought out decision and it was taken on the basis that achievement of 99 per cent efficiency instead of the 99.9 per cent efficiency tendered for would be adequate for the system; and

(2) The foreign exchange position was so tight that the fresh commitments had to be restricted to only those items which were essential and inescapable and hence the number of standbys were reduced so as not to exceed the sanctioned estimates.

The Committee regret to observe that none of the above two grounds can be sustained on the basis of the contemporary record made available to them. The reasons therefrom are discussed in the succeeding paragraphs.

2.83. It is seen that as early as 1965 the Railway Board had circulated to all the Railways the 'norms for microwave systems' and according to these norms, standby for radio equipment was to be provided at all stations when the system loading reached 24 channels or above. In the case of New Delhi—Mughalsarai microwave system it was clear even at the tendering stage that utilisation would be of over 24 channels even at the initial stage itself and therefore the provision of standbys was inescapable. Further, the Railway Board had issued certain guidelines on 30 July 1968 to all the Zonal Railways for the future planning of the systems and those guidelines envisaged provision of basic standby with the automatic change-over facilities even if the reliability to be achieved was 99 per cent. In the tenders for the New Delhi—Mughalsarai microwave system the reliability sought to be achieved was not only 99 per cent but 99.9 per cent, thereby making the provision of standby all the more essential. It is also seen that at the time of

issuing the guidelines in July 1968, the Railway Board had specifically directed the RDSO to issue system specifications based on the guidelines. In pursuance of this directive the RDSO furnished in October/ November 1968 the draft specifications, which called for the provision of standby as a compulsory device for all microwave links. It is thus to be seen that the provision of standbys was absolutely essential irrespective of the fact whether the reliability to be achieved was 99 per cent or 99.9 per cent and the Northern Railway and the Railway Board became aware of this right in 1968 itself.

2.84. It has been argued by the representatives of the Railway Board that with a view to cut down expenditure on equipment, the efficiency figure was reduced from 99.9 per cent to 99 per cent and this resulted in reducing the number of standbys. This contention of the Railway Board is not tenable firstly because the figure of efficiency aimed to be achieved as indicated in the tender documents was 99.9 per cent and in the concluded agreement also this figure remained unchanged, even after the number of hops at which standby was provided was reduced from 23 to 10. Secondly, no contemporary record has been produced to testify the fact that a deliberate decision had been taken to aim at 99 per cent instead of 99.9 per cent efficiency. As a matter of fact what the records reveal is a different story altogether. The Committee find that the Northern Railway approached the Railway Board on 3 May 1968 for the approval of the Tender Committee's recommendations for awarding the contract to the lowest tenderer, namely, the Belgium firm. The offer of the lowest tenderer provided for complete standby arrangements (using frequently diversity to cope with failure or outages of radio equipment as well as to overcome fading through frequency diversity receiption) at all the 23 hops on the New Delhi-Mughalsarai link and the total estimated cost of the work worked out to Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. There is no evidence to show that the Signals Directorate was willing to reduce the provision of standbys on technical considerations or it was overruled due to scarcity of funds. In fact the Signals Directorate never pointed out that there would be loss in reliability if the standby equipment was not provided at all the hops. Thus the reduction in the number of standbys is not a result of any deliberate well thought out decision under which efficiency of the system had been reduced from 99.9 per cent to 99 per cent.

2.85. Similarly, the other argument that due to the tight foreign exchange position the quantity of radio equipments to be procured was deliberately reduced is not borne out by contemporary record.

It cannot be denied that the foreign exchange position was tight and the Ministry of Finance had been impressing on the Ministries/ Departments of Government of India to reduce their foreign exchange requirements to the minimum. Yet the Committee have not been furnished any correspondence having been exchanged between the Northern Railway and the Railway Board suggesting that the requirement of standbys had to be cut down to conserve foreign exchage not with standing the loss in speech reliability that it would entail.

2.86. That the omission of standbys at the remaining 13 hops was a mistake is clearly borne out by the fact that in 1972 the Northern Railway on the basis of their experience in the sector already commissioned felt that the basic standbys at all hops were inescapable. Here again the argument given is that the need for additional standbys was felt in the context of the studies completed by RDSO in 1972. But the correct position is that in 1968 itself the RDSO had formulated the specifications which provided for standbys as a compulsory device. The configurations decided upon in 1972 by RDSO had nothing to do with the provision of standbys. This is further supported by the fact that the specifications incorporated in other global tenders floated by the Railway Board in January 1969 for seven microwave links stipulated provision of basic standbys at the terminals as well as repeater stations. Similarly, another contract entered into in December 1970 for supply of radio equipment for five microwave links envisaged provision of basic standbys in all the hops. From the above the Committee cannot but conclude that there has been a serious failure in not making a provision for standbys at all the hops *ab initio* and that the Railway Board had enough time to rectify this defect before April 1970 and take advantage of the low rates quoted by the firm but unfortunately they failed to do so. This has cost the exchequer an avoidable infrustuous expenditure of more than 10 lakhs.

[S. Nos. 16—22 (Paras 2.80—2.86) of Appendix to 136th Report of PAC (1978-79) (Sixth Lok Sabha)]

Action Taken

Although the decision taken in 1968 not to go in for frequency diversity on all the hops but only on 10 hops was based on the anxiety to minimise the use of foreign exchange and the general atmosphere of financial stringency necessitating investment being kept to the minimum, it is agreed that there was an opportunity to review this case to avail of the same rates before the crucial

date of 6-4-1970 so that the equipment could have been bought at the same unit rates as those of the initial contract. Unfortunately, no such review was conducted.

The PAC's observations have been noted and instructions are being issued to all the Railways pointing out the need to review systematically the requirement of materials covered under any particular contract so that the full extent of the tolerance clause available in the contract for purchase of the materials at the same rates could be availed of well in time before the final date on which the applicability of the tolerance clause expires.

[Ministry of Railways (Railway Board) O.M. No. 79-BC-PAC/ VI/136(16—23) dated 21 January, 1980]

CHAPTER III

RECOMMENDATIONS OR OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendations

The Committee note that on 7 May, 1970, the Director General, Supplies & Disposals placed an order on a firm (M|s. Wyman Gorden India, Ltd.) for supply of 408 Nos. of Coupling Hook to the Assistant Controller of Stores, North-east Frontier Railway, New Bongaigaon. The delivery was to be completed within 4 to 6 weeks from the date of placement of order. The firm offered the stores for inspection and these were rejected by the Director of Inspection, Bombay on 9 June, 1970 on the ground that they were rusty. The stores offered by the firm for reinspection on 29 June, 1970 were again rejected by the Director of Inspection on 9 July, 1970. Thereafter neither the firm offered any fresh stores for inspection nor did the indentor namely, Assistant Controller & Stores, Northeast Frontier Railway, or the Director General, Supplies & Disposals take up the matter with the firm. It was only on the 12 December, 1973, that is, after the lapse of a period of over three years from the stipulated period of completion of the supply, that the Controller of Stores, Northeast Frontier Railway enquired of the firm and the Director General, Supplies and Disposals the position of Supply. The Director General, Supplies and Disposals then initiated action in March, 1974 and after issuing a notice-cum-extension letter to the firm cancelled the old contract on 20 June, 1974 at its risk and cost. Fresh tenders were then invited and the stores were purchased from the same firm, which had in the meantime changed its name from Wyman Gorden India Ltd. to W.G. Forge & Allied Industries, at the rate of Rs. 260.00 per piece against Rs. 74 per piece contracted for earlier. This resulted in an extra expenditure of Rs. 75,888. There was no question of extension of contract which had expired long back. The unilateral action without the consent of the supplier could only make any purchase at its risk and cost invalid. The Committee cannot but suspect the *bona fides* of the deal.

[Sr. No. 24 (Para 3.20) of Appendix to 136th Report of Public Accounts Committee for 1978-79 (Sixth Lok Sabha)]

Action Taken

The Committee has been informed that since the rejection of the stores for the second time on 9-7-70 neither the firm came up with any request for extension in delivery date nor the consignee intimated about non-receipt of the stores and the case lost sight-of. It was only from Controller of Stores, N.F. Rly's letter dated 12-12-73 addressed to firm with copy to DGS&D it transpired that the supplies were still outstanding. In the endorsement to DGS&D the COS, N.F. Rly. requested for taking urgent action with the firm to expedite the supplies. The firm in reply *vide* their letter dated 10-1-1974 addressed to COS, N.F. Rly. with copy to DGS&D intimated that the stores after first rejection on 9-6-70 were retendered for inspection on 26-6-70 but Director of Inspection having not undertaken reinspection inspite of the reminder dated 27-7-70 the hooks were scrapped and disposed off as scrap. They, therefore, treated the order as cancelled. The firm also regretted their inability to manufacture the stores due to paucity of raw material and requested for cancellation of the A/T without financial repercussion. The information given by the firm was factually incorrect as the stores tendered for the second time were also rejected by the Director of Inspection on 9-7-70. Immediately Ministry of Law were consulted who *vide* their note dated 5-3-74 advised as below:

> "Since the contract has been kept alive by issue of the letter of 12-12-73 to the firm, before considering the question of cancellation, a notice of performance will have to be issued to the firm calling upon them to complete the supplies within a reasonable period of time."

A notice-*cum*-extension, therefore, was served on 20-3-74 calling upon the firm to complete the supplies by 15-5-74. The Committee in its recommendations has observed that there was no question of extension of contract which had expired long back and that unilateral action without the consent of the supplier could only make any purchase at its risk and cost invalid. This in fact is not correct as Controller of Stores, N.F. Rly. letter dated 12-12-73 addressed to the firm for expediting supplies had kept the contract alive and by such action the time ceased to be the essence of the contract. In order to make the time again the essence of the contract a notice to the contractor giving reasonable time was required to be given by Law and the cancellation could only be resorted to after the expiry of the aforesaid notice period. Therefore, the decision to issue notice-*cum*-extension was in terms of Ministry of Law's opinion and straightway cancellation of the contract was not possible.

The suppliers having failed to perform the contract even after allowing reasonable time by way of performance notice-*cum*-extension by 15-5-74 Ministry of Law were again consulted who in their opinion dated 22-5-74 advised cancellation of the contract at the risk and cost of the firm treating 20-6-70 as the date of breach provided the contract had not been kept alive after 15-5-74, the last extended D/P. The contract was accordingly cancelled at the risk and expense of the firm *vide* amendment letter dated 28-6-74 (and not 20-6-74 as mentioned in the recommendations). At the time of cancellation it was fully known that valid risk purchase will not be possible owing to expiry of 6 month's period for effecting risk purchase from the date of breach and that the purchaser could recover only general damages being the difference in the market rate on or around the date of breach and the contract price.

It will be observed from the foregoing that decision for serving notice-cum-extension and cancellation of the contract were taken strictly in terms of legal opinion and, therefore, there does not appear to be any ground for suspecting the *bona fides* of the deal.

[Ministry of Supply & Rehabilitation (Department of Supply) O.M. No. PIII-17(8)|79, dated 18 August, 1979]

Recommendation

3.21. In the explanation now offered for this lapse both the Railway Administration and the Director General Supplies & Disposals have attempted to apportion the blame on each other. Whereas the Director General, Supplies & Disposals has pleaded that the indentor did not give any intimation about the non-receipt of the stores, the Railway Administration have taken the stand that the Director General, Supplies & Disposals has its own progress cell for watching performance of contracts and taking action against the defaulting firm in time and, therefore, they should have taken action on their own. The Committee feel that there is no force in any of the two arguments being adduced for non-action. Obviously. there has been a serious lapse for which the responsibility should be fixed both in the office of the Assistant Controller of Stores and in the Directorate of Supplies & Disposals.

3.22. Another point that has incidentally come to notice is that the Controller of Stores, Northeast Frontier Railway had enquired telegraphically on 26/30-5-1972 from the Assistant Controller of Stores, New Bongaigaon whether the supplies had been received by him in full so that case could be closed. It was at this stage that the Assistant Controller of Stores, New Bongaigaon informed the

Controller of Stores on 12-6-1972 that the firm had not supplied the material. Why the Controller of Stores did not initiate any action at that stage is not clear to the Committee? It was only in December 1973 that the Controller of Stores took up the matter with the firm, after the Mechanical Department had complained about the short supply of this particular item of store. There has been a failure at this stage also for which the responsibility needs to be fixed. The Committee would like to be apparised of the action taken in the matter.

[S. No. 25-26 (Paras 3.21-3.22) of Appendix to 136th Report of PAC (1978-79) (Sixth Lok Sabha)]

Action Taken-Interim

3.21. The recommendation of the Committee is being examined from vigilance angle. The Committee would be informed about the final outcome in due course of time.

[Ministry of Supply & Rehabilitation (Department of Supply) O.M. No. PIII-17(8)/79 dated 18 August, 1979]

Further Action Taken

3.21. The recommendation of the Committee has been examined from Vigilance angle and the case has been treated as closed with the approval of Deptt. of Supply and Central Vigilance Commission.

[Department of Supply O.M. No. PIII-17(8)/79, dated 24 April, 1980]

Action taken

3.21 & 3.22. The reason for ACOS/New Bongaigaon not chasing the pending supplies, was due to availability of adequate stock and, hence there was no need to specificially chase the item at that particular instance. Action was taken later when the stock position deteriorated. It was agreed by the Railway Board that there were certain procedural lacunae which resulted in not taking timely action. This has since been set right by the administration and procedure orders have been issued streamlining the system as advised in reply to question No. 26 arising out of evidence before

the PAC. In view of this the Ministry of Railways would request the Committee not to insist on fixation of responsibility in this regard. It is once again reiterated that information about non supply of the item by the firm against the contract placed by DGS&D would have been available to the contract placing authority and there was no need to have depended on the consignee to furnish such information for initiating action.

[Ministry of Railways (Railway Board) O.M. No. 79-BC-PAC/VI/136(24-26), dated 28 December, 1979]

CHAPTER IV

RECOMMENDATIONS OR OBSERVATIONS REPLIES TO *WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE* AND WHICH REQUIRE REITERATION

Recommendation

1.81. The Committee find that four firms—two from Kanpur and two from Calcutta—had responded to the limited tender enquiry issued by the Diesel Locomotives Works Administration in February 1964 for supply of oxygen and acetylene gases. This enquiry stipulated the submission of quotations by not later than 20 March, 1964. Out of the four firms to whom the enquiry was addressed only the Indian Air Gases Limited, Kanpur made a positive offer. Another firm namely Indian Oxygen Limited, Kanpur in their letter of 13th March, 1964 wanted that the matter be kept pending till the next DGS&D rate contract, which was expected to be finalised by the end of the month. The third firm namely Industrial Gases Limited, Calcutta had *vide* their letter dated 9th March, 1964 asked for certain clarification before they could submit any quotation. On 17th March, 1964, the firm had been asked by DLW to submit a quotation before anything could be decided about the points raised by the firm for clarification. The fourth firm namely Asiatic Oxygen Limited, Calcutta had on 2nd April, 1964 asked for an extension of the due date for submission of the offer and the firm had been informed on 20th May, 1964 regarding the extension of time by 15 days. The firm had then submitted their formal offer on 15th June, 1964. Thus, with the receipt of the offeCr of Asiatic Oxygen Limited, Calcutta through their letter of 15th June, 1964 only two offers including the one from Indian Air Gases Ltd., Kanpur were available to the DLW Administration. Just when the Administration was having detailed discussions with these two firms for finalising the deal, Industrial Gases Limited. Calcutta, which had not submitted a tender, through a letter dated 24th February, 1965 offered to transfer their surplus oxygen and acetylene plants to DLW, Varanasi, if terms could be agreed upon. Discussions were then held with the representatives of this firm on 11th March, 1965 and ultimately on 5th April, 1965 the firm's formal offer was received. In the meantime Asiatic Oxygen Limited,

to enter into an agreement with the Indian Air Gases Limited for 3 to 5 years only as that would give the Administration enough time to make investigations for setting up of administration's own plant after the end of 3 to 5 years. Thereafter with the appearance of the Industrial Gases Limited on the scene on 24th February, 1965 with the offer of a surplus gas plant and after the deal with the firm covering a period of 10 years having been clinched, the proposal regarding installation of a gas plant came to be shelved automatically.

1.85. In terms of the agreement entered into with the Industrial Gases Limited a number of facilities were agreed to be given to the firm for setting up the plant for production of oxygen and acetylene gases. These included leasing of a 2.5 acre plot of land, providing surface drainage, giving connections for supply of water and electric energy at the supplier's factory. The lease was for a period of 30 years although the initial supply contract was only for 10 years. For the facilities so provided the Administration was to get a rental of Rs. 400 per month. Some other facilities provided to the firm either free of cost or on rental basis included the use of DLW main roads, approach roads, hospital, club and six quarters for the staff of the firm. Besides, the Administration also undertook to assist the firm in obtaining quotas, permits or import licences for their requirements of building material, iron and steel raw materials etc. and any such other facilities which were required for regular manufacture and supply of gases to the Diesel Locomotive Works. The over-all advantage which the Diesel Locomotive Works Administration sought to secure by this arrangement was an assured source of supply of oxygen and acetylene gases which are vital consumable items required for day-to-day production and maintenance activities in Diesel Locomotives Works.

1.86. The Committee find that while agreeing to provide these facilities the DLW Administration did not take care to safeguard their own interest. Although the initial supply contract was for a period of 10 years with an option reserving the right of the Administration to extend its currency for a period of not less than 5 years, the facilities were to be made available to the firm for a period of 30 years irrespective of whether DLW continued to buy gases from the firm after the expiry of the contracted period of 10 years or not. The justification given for this arrangement is that no entrepreneur worth his name would make an investment in a place like Varanasi unless some concessions were offered by the Railways. Unfortunately the implications of such an arrangement had not been properly analysed because if this had been done

the Administration would not have virtually mortgaged a sizeable piece of land with all attendant facilities for a mere sum of Rs. 400/-, of which land rent component was only Rs. 70/-, per month and for a period of 30 years. Whereas the firm had secured their interest by insisting on provisions regarding minimum off take and increases in the prices payable due to escalation in costs, the DLW Administration did not even consider to have an escalation clause which could take care of the future increase in the rentals.

1.87. Another serious drawback in the arrangement entered into with the firm was the provision regarding guaranteed minimum off take of gases by the Diesel Locomotive Works Administration. In terms of the agreement Diesel Locomotive Works was required to take minimum guaranteed quantities of oxygen and acetylene gases and in case the minimum stipulated quanties were found to be in excess of the requirements of DLW, the Administration was to seek the assistance of the firm for selling the excess gases and if no ready customer was available the firm would have the option to discharge the unlifted quantities of gases into the air on DLW's account. As opposed to this, the firm had been given full freedom to dispose of the gases produced at the cost of facilities provided by the Administration in excess of the requirements of DLW to any outside buyer without any interference by the Administration. Why this one-sided arrangement to the advantage of the firm was agreed to is suspicious and needs to be investigated. The Committee are also unable to appreciate the justification of the provision allowing the firm to let off the excess gases into the air on the Administration's account in preference to the same being diverted to other Railway Users.

1.88. It is distressing to note that even though the minimum guaranteed quantities of gases could not be lifted throughout the 10 year period of the contract except in 1966, the Administration never asked for assistance of the firm for the disposal of the alleged surplus gases as per the agreement. Further inspite of the firm repeatedly claiming to have offered to DLW the guaranteed minimum off take and emptied the unlifted quantities of gases into the air on the latter's account, the Administration did not undertake any verification of the actual production of gases and the discharge of the gases into the air by the firm.

1.89. The Committee feel that the arrangement entered into with the firm was one-sided and clearly biased in favour of the firm. No wonder the firm made the maximum use of the provisions of the agreement to extract maximum benefits which involved DLW in prolonged legal battle. Over a period of 10 years for which the

original agreement was valid the firm was dragged the Administration to arbitration on no less than five times.

1.90. The Committee find that after inviting tenders and taking into account the rates in the rate contract of DGS&D for supply of these gases the Administration in May 1976 extended the contract with the firm for a further period of 7 years on the same terms and conditions except slight reduction in the quantity of minimum offtake of gases and the payment therefor was to be made at the rates to be determined by the Chief Cost Accounts Officer, Ministry of Finance. The firm, however, refused to furnish the basic information required by the Chief Cost Accounts Officer for fixation of rates. Consequently the rates for supply of these gases could not be finalised so far. It is significant to note that the firm had at one stage threatened the Administration that if no agreed prices were settled by 30 November, 1977, they would be compelled to charge as per their list prices. Ultimately the firm unilaterally discontinued supply of the gases from July 1978, compelling the Administration not only to obtain its requirements of the gases from other sources at higher prices but also to seek legal remedy in the matter. Thus the apparent cheaper rates offered by the firm on consideration of which the contract was extended have proved illusory. The Administration does not appear to have learnt any lesson from its experience with this firm for more than 10 years. This is deplorable to say the least.

1.91. The foregoing paragraphs make an unsavoury reading and give rise to suspicion about the bona fides of the whole arrangement. The Committee would, therefore, recommended that the whole case may be investigated so as to identify the persons who were responsible for showing undue favour to this firm.

1.92. Apart from the drawbacks in the agreement entered into with the Industrial Gases Ltd., which have come to light, the Audit paragraph also highlights a serious case of negligence in the matter of appointment of an arbitrator by the Administration in the first arbitration case. It is noted from the Audit paragraph that the firm, not being satisfied with the decisions of the Diesel Locomotive Works Administration on several points such as compensation claimed by the firm for not lifting the minimum guaranteed offtake of gases, compensation for damages to cylinders non-supply of power and water in time, non-provision of approach roads, surface drainage facilities etc. sought arbitration on five occasions for a total claim of Rs. 67.10 lakhs. The first arbitration case pertained to the year 1966 and 1967 in which the Administration failed to

appoint an arbitrator in time as a result of which it was made absolute and the Administration had to pay Rs. 2.01 lakhs towards the arbitration award and the cost of the suit. In the second, arbitration case pertaining to the year 1968 and 1969 where the Administration appointed its arbitrator in time, the decision was favourable to the Administration. The awards in the third, fourth and fifth arbitration proceedings are still awaited.

1.93. From the information made available to the Committee it is seen that for the first arbitration case, the firm appointed its arbitrator in March 1967 and requested the Administration to appoint their arbitrator as per the terms of the agreement. The Administration, however, in utter neglect of its duty failed to appoint its arbitrator within the stipulated period of 15 days as required under the Arbitration Act. Thereupon, the firm nominated its own arbitrator as the sole arbitrator in April 1967. The Administration challenged this position and appointed its arbitrator in May 1967. But this was not accepted by the firm. The firm protested against the belated nomination of an arbitrator by the Diesel Locomotive Works Administration and the sole arbitrator appointed by the firm proceeded ahead with the arbitration and made an award against the Administration. Ultimately the court gave judgement on that award. In between, in a futile attempt to cover up its earlier latches of failing to appoint an arbitrator in time, he Administration had sought legal remedy by filing a suit first in the court of the Civil Judge, Varanasi and had then gone in appeal to the Allahabad High Court. The Administration's case could not be sustained in any of the two courts as the Administration had "acted unwisely by not appointing an arbitrator within the time allowed by law."

1.94. Explaining the reasons for not appointing the arbitrator within the stipulated time, the Ministry of Railways have stated that the expectation then was that the matters under dispute would be settled amicably by discussions which were then in progress. **Pima facie** this is nota satisfactory explanation because the nomination of an arbitrator could not have in any way precluded or prejudiced the discussions with the firm which were stated to be in progress at that time. The Committee are of the view that the Administration had miserably failed to exercise its right to appoint its arbitrater in proper time. The Chairman, Railway Board during the course of his evidence before the Committee

conceded that there has ben negligence in this case. The Committee desire that responsibility for this serious and costly lapse, including wasteful legal expenditure, should be fixed.

[S. No. 1-14(Paras 1.81 to 1.94) of Appendix to 136th Report of PAC (1978-79) Sixth Lok Sabha)]

ACTION TAKEN—INTERIM

Para 1.91

The Ministry of Raiways have since constituted a Committee consisting of Adviser (Finance), Adviser (Industrial Relations) and Director Rly Stores, Railway Board to investigate the whole case in the light of the observations made by the Public Accounts Committee. The findings of the enquiry Committee will be advised to the PAC as soon as their report is received.

Paras 1.81 *to* 1.90 & 1.92-1.94

The observations made by the Committee will be gone into by the committee constituted by the Rly. Board in pursuance of PAC's recommendation made in para 1.91 and reply to each of the observations made in these paras will be sent on receipt of committee's findings.

[Ministry of Railways (Railway Board) D.O. No. 79—BC-PAC-VI/136 (1—15) dated 3 December, 1979]

Further Action Taken

In pursuance of the recommendations of the Public Accounts Committee, the Ministry of Railways appointed a Committee consisting of Adviser Finance, Adviser Industrial Relations and Director Railway Stores to investigate and report on this case.

The Committee have since completed its enquiry and has come to the conclusion that no malafides were involved either in the award of this contract or in its operation or in its extension beyond 31-12-1975. As regards the non-appointment of an Arbitrator in time the loss incurred as a consequence, was of a small order though all sincere efforts were made by the D. L.W. Administration to settle the dispute with the vrm by mutual discussions. The reasons given by the enquiry Committee in coming to the conclusions stated above are as follows:

(i) The award of the contract to M/s Industrial Gases Limited by D.L.W. was in order. This is because the esta-

blished suppliers M/s Indian Oxygen Limited were not interested in supply of these gases to the D.L.W. outside the D.G.S. and D. rate contract. The award of the contract to the Indian Oxygen Limited, in case this was possible, would have meant, transportation of Gas cylinders from the firm's plant at Kanpur. This would have guaranteed uniform availability of an item which of vital importance to loco production at D.L.W.

(ii) It is a fact that Industrial Gases Ltd. gave a belated offer and this was given due consideration. Procedurally, there is no objection to accepting a late offer if it is to the advantage of the administration and under conditions of limited competition. Further, the offer of M/s Industrial Gases Ltd. was found to be attractive as compared to the other offer of M/s Indian Air Gases. The Committee found no evidence on record to indicate any undue influence being brought on D.L.W. administration in favour of Industrial Gases Ltd. There is no evidence to show that the Administration was favourable towards Industrial Gases Ltd.

(iii) A major facility extended to Industrial Gases Ltd. was the lease of D.L.W.'s land for 30 years with supply of electricity and water. The other firm viz. Indian Air Gases Limited did not ask for such a lease as it had purchased land on Mughalsarai—Varanasi road. Therefore, supply of facilities like electricity and water by D.L.W. would not have been of any significance to this firm or in the rate of gases offered by them. The Committee, therefore, did not find any evidence of extraneous considerations having influenced the award of the contract to Industrial Gases Ltd.

(iv) The stipulation about the minimum guaranteed off-take of gases was accepted because Asiatic Oxygen Ltd. had also insisted on it. No company would set up a new unit without being guaranteed of a minimum production. Since the D.L.W.'s minimum requirements from 1-1-1968 were less than the capacity installed, the firm had to be given a free hand to dispose off the excess production. The Committee did not find anything unusual in this. The D.L.W. administration did not consider itappropriate to undertake detailed verification of the production/distribution of gases by the said firm, since

this course of action could have prejudiced the operation of Force Majeure Clause.

(v) As regards extension of the contract, only two tenders were received viz. from Indian Air Gases Ltd. and Industrial Gases (Bihar) Pvt. Ltd. The rates offered by both these firms were found much more than the rates stipulated in D.L.Ws. original contract. A study of the financial implications showed that the extension of the contract beyond December, 1975 was favourable to the administration as compared to other alternatives. Before extension contract was finalised, M/s Industrial Gases Ltd. had agreed to reduce the minimum guaranteed off-take quantity and also to the fixation of the prices by the Chief Cost Accounts Officer of the Ministry of Finance on the basis of current production costs. The Committee is of the view that action resorted to by D.L.W. administration was not unusual.

(vi) The Enquiry Committee have come to the conclusion that the failure on the part of D.L.W. administration to appoint an Arbitrator in time did not result in any substantial loss. They have concluded that except for an amount of Rs. 4.3 thousands the balance awarded by the Sole Arbitrator was in any case payable to the firm in terms of the various stipulations of the agreement with the firm. The Committee have concluded that non-appointment of an arbitrator in time appears to have been normal due to the impression in the minds of the then General Manager and F.A. & C.A.O. that the firm would be agreeable to settle the disputes by mutual discussions. The General Manager concerned is now dead. At this stage it is not possible to get any intention about his thinking on the subject. As far as the F.A. & C.A.O. is concerned, the Committee is of the view that there is no malafide on his part. In regard to the legal expenses the decision to go for filing of suit was of the General Manager and not of the F.A. & CAO.

Summing up. the Enquiry Committee has come to the conclusion that no officer is to be held responsible in this case.

[Ministry of Railways (Railway Board) OM No. 79-B(i)-156 (1—15) dated 12 September, 1980]

ANNEXURE

REPORT OF THE COMMITTEE APPOINTED BY THE RAILWAY BOARD ARISING OUT OF THE OBSERVATIONS OF THE PUBLIC ACCOUNTS COMMITTEE (PAC)—1978-79 IN THEIR 36TH REPORT—PARA 32 OF C&AG'S REPORT FOR THE YEAR 1976-77.

The Railway Board appointed a Committee, *vide* their letter No. 79-BC(PAC) VI/136 (1—15) dated 22-6-79, consisting of the following officers:

Adviser (Finance)

Adviser (Industrial Relations)

Director (Railway Stores)

The Committee was to investigate and report on two aspects of the 136th Report of PAC (1978-79) vide paras 1.90 and 1.93 thereof. The para numbers should actually be 1.91 and 1.94.

2. Before dealing with the matter referred to the Committee for investigation, it would be desirable to record a brief background of the case for proper appreciation of the whole position.

2.1. The Diesel Locomotive Works (DLW) was set up at Varanasi in August, 1961, for undertaking manufacture of Diesel-Electric Locomotives in India. Such locomotives were being obtained by import till then and there was neither the technical know-how nor any manufacturing facility in India.

2.2. The DLW obtained the technical know-how from the ALCO Products Incorporated of the U.S.A. with whom collaboration agreements were entered into. The Production plan drawn up envisaged progressive increase in the level of locomotive production from year to year commencing from the financial year 1963-64 and reaching the annual target of 150 locomotives per year in 1967-68.

2.3. For the various manufacturing activities in the DLW, which is based on welding and gas cutting process to a large ex-

tent, oxygen and dissolved acetylene (D.A.) gases are essential items of consumption. The availability of these gases in adequate quantity and without any interruption is of vital importance for the production activity in the DLW shops.

2.4. Commencing from July, 1962, the DLW Administration initiated action for locating a source for these gases. They contacted the established manufacturers in this field like Indian Oxygen Ltd., Asiatic Oxygen Ltd. and the Industrial Gases Ltd., and held discussions with some of their representatives. Resulting from such exploratory efforts, the following four firms were addressed in February. the 26th, 1964 for submitting their quotations for supply of these gases including the laying of pipe line:

(i) Indian Oxygen Ltd., Kanpur.

(ii) Asiatic Oxygen Ltd., Calcutta.

(iii) Industrial Gases Ltd., Calcutta.

(iv) Indian Air Gases Ltd., Kanpur.

2.4.1. The Indian Oxygen Ltd. advised that the matter may be kept pending till finalisation of DGS&D's rate contract for the period from 1-4-64 to 31-3-66 as DLW can draw gas against such a rate contract.

2.4.2. The Asiatic Oxygen Ltd., and Indian Air Gases Ltd., gave positive offers. Later, Asiatic Oxygen Ltd. withdrew from the field. DLW Administration came to a decision on 22-2-65 to award the contract to Indian Air Gases Ltd. who had yet to set up their plant, subject to their reducing the rates. The Industrial Gases Ltd. indicated their willingness (24-2-65) to set up a plant in DLW. Earlier in response to DLW's inquiry of February, 1964, this firm did not give any positive offer but only sought certain clarifications.

2.5. After consideration of various aspects the DLW Administration awarded the contract to Industrial Gases Ltd., and an agreement dated 21-4-65 was entered into with this firm. The agreement stipulated commencement of supply of gases from 1.1.1966 and the initial period of supply was to be 10 years which could be extended at the option of DLW for a period of not less than 5 years under the same terms and condition. The firm was also given lease of 2.50 acres of DLW's land for a period of 30 years and were to be given supply of electricity and water on payment of certain charges. They were also to get certain other facilities like use of DLW's roads, hospital, etc. The Agreement stipulated the quantity of

gases to be lifted and paid for per month as 7,000 cm of oxygen and 1000 cm of D.A. from 1-1-66 and 18,000 cm of oxygen and 2000 cm of D.A. from 1-1-67 and 18,000 cm of oxygen and 2500 cm of D.A. from 1-1-68 onwards. In case DLW did not lift these minimum quantities of gases, the firm was at liberty to blow off the quantity of gases not lifted by DLW into the air if not ready customer was available and DLW was liable to pay for the stipulated minimum quantities. The agreement was governed by the usual force majeure clause and an arbitration clause.

2.6. Since DLWs production plan as earlier envisaged was drastically reduced due to difficult foreign exchange position, the grm was advised in November 1966 that the increased level of lifting of gases from 1-1-1967, as stipulated in the agreement will not be needed. This was not acceptable to the firm and resulted in disputes with them. Similar advices were also issued by DLW in the subsequent years. In fact, DLW did not lift the stipulated minimum quantities of gases in any of the years commencing from 1-1-67.

3. Terms of Reference—Two aspects on which the Committee was to investigate and report are the following, as contained in paras 1.91 and 1.94 of the said Report of the PAC.

Para 1.91 *of the Report*:

> "The foregoing paragraphs make an unsavoury reading and give rise to suspicion about the bonafides of the whole arrangement. The Committee, would, therefore, recommend that the whole case may be investigated so as to identify the persons who were responsible for showing undue favour to this firm."

Para 1.94 *of the Report*:

> ".... The Committee are of the view that the Administration had miserably failed to exercise its right to appoint its arbitrator in proper time. The Chairman, Railway Board, during the course of his evidence before the Committee conceded that there has been negligence in this case. The Committee desire that reponsibility for this serious and costly lapse, including wasteful legal expenditure should be fixed."

4. Additional Point—A persual of the said 136th Report of the PAC would show that they had also made certain comments about

the extension of the agreement beyond the initial 10-year period by the DLW Administration. Para 1.90 of the Report inter alia, reads, "....Thus the apparent cheaper rates offered by the firm on consideration of which the contract was extended have proved illusory. The Administration does not appear to have learnt any lesson from its experience with this firm for more than 10 years. This is deplorable, to say the least."

4.1. Since para 1.91 of the Report mentions about the foregoing paragraphs, the observations of the Committee in para 1.90 of the Report have also been dealt with in the Report, even though this aspect is not specificially mentioned in the Railway Board's letter of 22-6-1979.

5. Investigations on Paras of P.A.C. Report.—The Committee has gone through the available records and had discussions with the following officers, who have also given their written statements: .... .

(1) Shri H. K Bhalla	. Retd Adviser (Fin) and FA&CAO, DLW—during the period the contract was negotiated and finalised.
(2) Shri M. B. Jagannath	Retd. FA&CAO/IFC and FA&CAO/DLW during the time the firm asked for appointment of arbitrator in March 1967.
(3) Shri R. Srinivasan	. Presently FA&CAO (WST)/South-Central Railway and FA&CAO/DLW—during the time of extension of the contrac beyond December, 1975.

The Committee, except for Adviser (IR), has also visited DLW in this connection.

6. Investigation in Para 1.19 of the PAC Report—The observation of the whole case so as to identify the persons who were responsible for showing undue favour to this grm and their suspicion about the bono fides of the whole arrangement is arising out of the detailed observations in the preceding paragraphs of the said Report, and covering mainly the aspects of awarding the contract to the Industrial Gases Limited with incidental mention of extension of the contract beyond the initial 10-year period. Review of the concerned files of the DLW Administration on awarding of the contract to the Industrial Gases Ltd. show that the matter was dealt wih mainly by exchange of nothing between the then FA and CAO (Sh. H. K. Bhalla) and the then CME (Late Sh. R. Subbiah), on which approval of then G.M. (Sh. S. Chakravarti) was obtained from time to time. Since the main notes were of

the then FA&CAO (Sh. H. K. Bhalla), the Committee has discussions with him and has also taken a statement from him. The remarks given hereunder are based on the Committee's study of the various available records and the statement of Sh. Bhalla. The remarks have been given on each of the aspects contained in paras 1.81 to 1.90 of the PAC's report.

6.1. The main points brought out in the said paras of the PAC Report are as under:

(i) The Railway Administration assumed presumptuously and unwarrantedly that Indian Oxygen Limited, which was possibly the best known firm in this field, would not guarantee supplies even before they had spelt out their offer. (Para 1.82 of PAC Report).

(ii) When a belated offer of the Industrial Gases Ltd., a much smaller organisation, received after about a year of the last date for submission of quotations could be entertained by the Administration, there could be no justification whatsoever in over-looking a far better established firm (Para 1.82 of PAC Report)

(iii) The action taken by the Administration only goes to show that either the Administration was keen to bring in the Industrial Gases Ltd. or it was justifiably prejudiced against the Indian Oxygen Ltd. (Para 1.82 of PAC Report).

(iv) It is not clear how the Railway Administration could adjudge relative superiority of a particular offer/tender without making a proper evaluation of the two offers (para 1.83 of PAC Report)

(v) To be fair to the different firms, their rates for supply should have been ascertained in case some facilities had been extended to them as asked for by Industrial Gases Ltd. like land, water, electricity, etc. (Para 1.83 of the PAC Report).

(vi) It would appear that the rate differential was not the only consideration which weighed in favour of the Industrial Gases Limited and that the Administration either took a narrow view of the financial implications of the offer of

Industrial Gases Ltd. or they were influenced by some extraneous considerations so as to agree to all sorts of conditions imposed by the firm. (Para 1.83 of PAC Report).

(vii) With the appearance of the Industrial Gases Ltd. on the scene on 24-2-65 with the offer of a surplus gas plant and after the deal with the firm covering a period of 10 years having been clinched, the proposal regarding the installation of a gas plant came to be shelved automatically (Para 1.84 of the PAC Report).

(viii) While the DLW Administration agreed to provide many facilities to the Industrial Gases Ltd. like leasing of land, provision of surface drainage, supply of water and electricity etc. the Administration did not take care to safeguard their own interest. Though the initial supply period was 10 years, facilities were made available to the firm for a period of 30 years. The implications for such an arrangement had not been properly analysed, and if this had been done, the Administration would not have virtually mortgaged a sizeable piece of land, with all attendant facilities for a mere sum of Rs. 400/- of which land rent component was only Rs. 70/- per month and for a period of 30 years (Para 1.86 of PAC Report)

(ix) Whereas the firm had secured their interest by insisting on provisions regarding minimum offtake and increases in prices payable due to escalation in costs, DLW Administration did not even consider to have an escalation clause which could take care of future increase in the rentals. (Para 1.86 of PAC Report)

(x) Another serious drawback in the arrangement with the firm was the provision regarding guaranteed minimum offtake of gases by DLW. In case the minimum offtake stipulated was found to be in excess of the requirement of DLW, assistance of the firm was to be sought for selling the excess quantity and the firm had the option to discharge the unlifted quantity of gases into the air on DLW's account in case no ready customer was available. (Para 1.86 of PAC Report)

(xi) The firm was given full freedom to sell gases to other customers when such gases were produced with the facilities provided by DLW. PAC feels suspicious about this one sided arrangement to the advantage of the firm and wants investigation. They (PAC) do not also appreciate the

justification for the provision allowing the firm to let off gases into the air on DLW's account in preference to these being diverted to other Railway Users. (Para 1.87 of PAC Report).

(xii) Though the DLW has not been able to lift the minimum guaranteed offtake throughout the 10-year period, except in 1966, the Administration never asked for assistance of firm for disposal of surplus gases. (Para 1.88 of PAC Report).

(xiii) In spite of the firm's repeated claim of unlifted quantities of gases having been let off in the air on DLW's account, the Administration did not undertake any verification of actual production of gases and discharge of the gases into the air. (Para 1.88 of PAC Report)

(xiv) The Committee felt that the agreement was one-sided and clearly biased in favour of the firm enabling the firm to make maximum use of the provision, of the agreement to extract maximum benefits which involved DLW in prolonged legal battle. They have dragged the Administration to no less than five arbitrations. (Para 1.89 of PAC Report)

7. Our views on each of the points mentioned in para 6.1 above are given below:—

(i) The review of the papers would show that the DLW Administration contacted the Indian Oxygen Limited as early as in July, 1962. It would also appear that this firm had some arrangements with M|s B.D. Kejriwal & Sons, who later floated a company by the name of Indian Air Gases Limited. The proposal of Indian Oxygen Ltd. of 13/3/64 in response to DLW's enquiry of February, 1964, to keep the matter pending till finalisation of DGS&D's rate contract for the period 1|4|64 to 31|3|66 (read with their earlier tie up with the Indian Air Gases Limited would show that the Indian Oxygen Ltd. were not interested in supplying gases outside the DGS&D's rate contracts. The DLW's need for such gases from a Plant in or around DLW would not have been met from this source namely Indian Oxygen Ltd. with offer of supply against the DGS&D's rate contract which would have required ransporation of gas cylinders from Kanpur or Asansol plants of Indian Oxygen at extra additional cost.

(ii) It is true that Industrial Gases Ltd. gave a belated offer, which was given due consideration. Procedurally, there is nothing wrong in accepting a late offer if it gives a

substantial advantage to the Administration, where the scope of competition is limited. On receipt of Industrial Gases' offer the same was compared with that of Indian Air Gases. The DLW Administration found that the offer of Industrial Gases Ltd. was very attractive and the other stipulations were not such of importance which could not be settled across the table. In the final analysis, the DLW Administration concluded that the rates of Indusrrial Gases were far cheaper than those of Indian Air Gases—the only other quotation under consideration. The Committee find no evidence on record to show that any undue influence was brought to bear on the DLW Administration in favour of Industrial Gases Ltd. The Committee find no malafide in the case.

(iii) Considered in this background, it may not be proper to suggest that the Administration was keen to bring in the Industrial Gases Limited or it was unjustifiably prejudiced against the Indian Oxygen Limited.

(iv) It is true that the value of the various facilities made available to the Industrial Gases Ltd. was not evaluated in terms of money value and taken into account in working out the comparative postion of the rates of the two firms finally left in the field, namely, the Industrial Gases Ltd. and the Indian Air Gases Ltd. The Committee, however, refer to their comments under (ii) above.

(v) One of the major facilities extended to the Industrial Gases Ltd. is the lease of land for 30 years, with supply of electricity and water. The other firm left in the field, namely, the Indian Air Gases Ltd. did not ask for such a lease presumably because they had purchased the land on the Mughalsarai-Varanasi Road. Shri H. K. Bhalla in his statement has indicated that the most vital considertion was to ensure uninterrupted supply of gases at the doorstep and that the Administration was understandably not enthusiastic to place reliance on a newcomer in the field. Papers, however, show that the Indian Air Gases Limited, who are referred as a New Comer in the field, were chosen to be awarded the contract, no doubt, subject to their reducing the rates. Since the Indian Air Gases Ltd. had already purchased the piece of land for setting up of their plant in the Mughalsarai-Varanasi Road, the

facilities like supply of electricity and water by DLW, use of DLW's roads etc. would not have been of any significance to this firm and accordingly would not have affected the rate of gases offered by them. Further, their escalation clause was also to include the wage escalation which would have been an indeterminate factor at that stage.

(vi) The Committee find that the comparison of the two rates for awarding the contract to Industrial Gases Limited may not be taken to be the result of a narrow view of the financial implications of the two offers nor could there be any extraneous consideration.

(vii) The availability of the source of Industrial Gases Ltd. close to the DLW plant as a long term source of supply of oxygen and DA gases appears to have no doubt influenced the Administration's thinking of going in for a plant of their own for such gases. It is, however, necessary to re-examine the possibility of setting up such plant at this stage now after detailed review of the economics of self generation of gases vis-a-vis purchase of such gases from other sources including DGS&D rate contracts.

(viii) & (ix) The facilities made available to the Industrial Gases Ltd. may not be considered to be of significance except for the lease of land, the supply of electricity and water and non-provision of revision of rent for such lease. The Administration could have bargained for a lesser period of lease or at least for trying up the period of lease with the period of currency of supply of gases by the firm to DLW. The provision of supply of water and electricity could also be on similar lines as for lease of land mentioned above. The rent for the lease could be similarly linked with the period of supply of fiases to DLW. However, lack of such provision may not have very seriously affected the financial interests of the railways if these stipulations are considered as part of overall consideration of the contract.

(x) Shri Bhalla in his statement has indicated that the stipulation about the minimum guaranteed off-take of gases was accepted because Asiastic Oxygen Ltd. had also insisted on it as no new Unit would be set up without a minimum production.

(xi) The Agreement indicates that DLW's ultimate requirement of oxygen and DA gases would be approximately 30,000 c.m. and 7,500 c.m. respectively per month. The capacity set up by Industrial Gases in their plant was eventually to meet these requirements. Since the DLW's minimum requirements from 1.1.1968 were less than the capacity installed, the firm had to be given the freedom to dispose of the excess production. Committee do not find anything unusual on this.

(xii) Since the DLW Administration notified the firm about the reduced level of requirement of gases before the commencement of each year by invoking the Force Majeure clause, any attempt to divert the gases alleged to have been blown off in the air to other Railway users as a regular measure or seeking firm's assistance to the disposal of surplus gases or verification of actual production of gases and the discharge thereof in the air would have made the Administration liable for payment for such gases, nullifying the effect of the operation by the DLW of the Force Majeure Clause. DLW's stand has, in effect, been upheld by the umpire in the second Arbitration case. Verification of actual production of gas round the clock is also a doubtful proposition.

(xiii) In view of what has been explained in respect of Item No. (xii), DLW Administration did not consider it appropriate to undertake a verification of actual production.

(xiv) They are covered by the comments offered in Item Nos. (i) to (xiii).

8.8. Extension of contract—The papers available on the relevant file of DLW Administration leading to the extension of the currency period of the contract with Industrial Gases Ltd. beyond December, 1975, show that the DLW Administration had called for tenders, in response to which only two tenders were received from:—

(i) M|s Indian Air Gases Ltd.

(ii) M|s. Industrial Gases (Bihar) Private Ltd.

The address of the second firm was exactly the same as that of Industrial Gases Ltd. The rates offered by both the firms were much more than the rates stipulated in the DLW's current agreement. The DLW Administration examined the financial implications of

the extension of the contract even after providing the minimum guaranteed off-take and escalation and found that the extension of the contract would be very much in the Administration's favour. The Administration also made a comparison with the DGS&D rate contract in this connection. Before the extension contract was finalised, M/s. Industrial Gases Ltd., in negotiations, agreed to reduce the minimum guaranteed off-take quantity and to the fixation of the prices by the Chief Cost Accounts Officer of the Ministry of Finance on the basis of current production costs. It is a fact that this firm has dragged the Administration into arbitration over the earlier contract period but their performance in respect of supplies was reasonably satisfactory. It is, however, unfortunate that the firm refused to give all the data required by the Chief Cost Accounts Officer, Ministry of Finance, and has subsequently stopped supplies of gases to DLW. The Administration is now procuring the gases from other sources at the firm's risk and cost. The Committee is of the view that the action taken by the Administration was not unusual.

9. Arbitration—In regard to the PAC's observations in para 1.94 of their report in connection with the inability of the DLW Administration to appoint their arbitrator in time, the Committee has carefully gone through all available records and have had detailed discussions with Shri M. B. Jagannath, retired FA&CAO, I.C.F. who was the FA&CAO, D.L.W., during the relevant period of time. Shri Jagannath has also given a written statement explaining his view point in this regard. Since the aspect covered by the PAC's observations in para 1.94 of their report relates to an identified alleged loss of Rs. 2.01 lakhs, the Committee has to bring out in brief the background of the whole aspect.

10. DLW Administration intimated in a letter of November, 1966 addressed to the firm that they will not require the enhanced minimum stipulated quantity applicable from 1.1.1967 (14,000 cubic metre of oxygen and 2,000 cubic metres of DA gases per month from 1.1.1967) and that their requirements will be of the level of lifting of gases during the year 1966. The agreement stipulated monthly drawal of 7,000 c.m. of oxygen and 1,000 c.m. of D.A. gas from 1.1.1966 to 31.12.1966 which doubles to 14,000 c.m. of oxygen and 2,000 c.m. of DA gas from 1.1.1967. The firm contested the stand of DLW conveyed in their letter of November, 1966. At about that time there was a change in the incumbent of the post of FA&CAO, DLW, when Shri H. K. Bhalla was transferred and Shri M. B. Jagannath was to take over. The change in the incumbent

of the post of FA&CAO, also coincided with change in the incumbent of the post of General Manager when the then CME (late Shri R. Subbiah) was posted as General Manager vice Shri S. Chakravarti. While the CME took over the charge of General Manager on 3.1.1967 the new FA&CAO (Shri M. B. Jagannath) took over charge on 27.1.67. By then the new General Manager had certain discussions with the firm's representative on 24.1.67 and on Shri Jagannath's taking over charge, he was directed by the G.M. to deal with the matter. It has to be noted in this connection that the new G.M. in his capacity as CME, DLW, had dealt with the matter of conclusion of the contract with the firm, and had the background of having the FA&CAO closely involved in various discussions etc. with the firm's representative. Shri Jagannath, FA&CAO, DLW, get involved in the various discussions and other follow-up action on the disputes arising out the operation of the agreement during the first year (1966) as the General Manager, directed him to that effect. The involvement of Shri Jagannath in this matter has, therefore to be considered in this background. The then G.M. is long dead and only Shri Jagannath is available.

11. The Committee consider it necessary to catalogue the events on this aspect of the enquiry:—

On 24.1.67, a meeting was held by GM/DLW in his room with Shri K. L. Garg, Managing Director of Industrial Gases Ltd. The question of rent on cylinders on the 4th day from the day of receipt, rent on cylinders supplied as buffer stock and price variation on DA gas were discussed. The note of discussion was sent by DLW on 1.2.67. On 8.2.67, Industrial Gases Ltd. replied indicating some points needing clarification on 25.2.1967, the DLW (FA&CAO office) replied to the firm's letter of 8.2.1967. In their letter dated 10.3.67, the firm raised a dispute regarding the very factual position of discussion on 13.3.67, regarding the very factual position of discussion on 13.3.67 the G.M. asked the F.A. to discuss this. The papers were put up by SAO to F.A. and CAO on 16.3.67, and the case was discussed with G.M., when the FA&CAO recorded the following undated note on the letter itself.

"This was discussed with G.M. I contracted Shri Garg of Industrial Gases. I requested him to come here for a discussion which he has agreed to do by the 1st week of April. I have also told him that this letter would be

kept pending till we discuss. The local branch may be informed accordingly."

In this connection, a letter dated 28.3.67 was issued to the local office of Industrial Gases Ltd. asking them not to send the rental bills. In the meantime firm's letter dated 23.3.67 addressed to the G.M. was received on 28.3.67. In this letter the firm asked for arbitration and asked DLW to appoint their arbitrator within 7 days. On receipt of this letter, G.M. endorsed the letter to F.A., enquiring:

"Have you spoken to that firm?"

FA&CAO|DLW wrote to the firm on 30.3.67, showing surprise on the appointment of the arbitrator and expressed his belief that the points raised in the letter of 23.3.67 can be settled amicably in discussion during the proposed visit of Shri Garg, Managing Director, Industrial Gases Ltd. MD|Industrial Gases Ltd. in his reply dated 10.4.67 passed some aspersions on the agreement reached on 24.1.67 with GM, DLW, which was not being honoured. He, however, agreed to discuss 'without prejudice'—since the matter was already before the arbitrators. FA&CAO|DLW in his reply dated 20.4.67. again expressed the hope that the matter can be settled in discussion. The firm through their letter dated 24.4.67 advised DLW that since DLW had not appointed an Arbitrator although 30 daysha d elapsed, Shri Dhar was being appointed as the sole arbitrator.

On 1.5.67, GM|DLW acknowledged the firm's letter of 24.4.67 and advised that the information on the various points was being collected and will be furnished separately.

The above chronology shows that the firm was on the one hand taking legal measures and on the other, keeping up a dialogue with DLW thereby balled the DLW Administration into a state of inactivity on the real issue of appointment of the arbitrator.

12. The expenses involved in these litigations for revoking the appointment of the sole arbitrator and also the subsequent litigation on the sole arbitrator's award have been indicated by the DLW as about Rs. 2.3 thousand and Rs. 2.0 thousand respectively.

13. The sole arbitrator's award of Rs. 2.01 lakhs is made up of the following:

(i) Price of the quantity of gas alleged to have been blown off in the air	
(ii) Exalation in price as per escalation formula of the agreement	Rs. 36 thousand
(iii) Rent on cylinders etc.	Rs. 23 thousand
(iv) Refund ofelectricity	Rs. 28 thousand
(v) Sales Tax	Rs. 10 thousand
(vi) Cost of suit and miscellaneous items .	Rs. 2 thousand
Total . .	Rs. 201 thousand

14. The firm had claimed a total amount of Rs. 9.85 lakhs in this arbitration against which the sole arbitrator gave an award of Rs. 1.99 lakhs and the balance amount of Rs. 7.86 was either not pursued or was rejected by the sole arbitrator. Out of the amount of award of Rs. 2.01 lakhs, including cost of suit etc., the claim towards rent on cyclinders, price escalation on lifted quantity of gas and the sales tax due on such amount were in any case to be paid to the firm as the agreement stipulated payment of price escalation and rent on cylinders. The DLW did not pay these for want of certain data etc. from the firm and the matter was referred to arbitration. Similar amount was awarded to the firm in the second arbitration. Likewise the award of Rs. 28 thousand towards electricity charges cannot be said to be wholly not due to the firm. The only disputed amount could thus be the price of gas alleged to have been blown off in the air including price escalation thereon. Considering, however, the fact that the agreement stipulated payment for the minimum stipulated quantity by DLW to the firm even if the quantity of gas lifted was less than such stipulated minimum quantity andd also considering the nothings in the file at the time of entering into the agreement dealing with this particular stipulation, it cannot be said with any degree of certaintv that the firm is not entitled to such payment only because the force majeure clause of the agreement was operated upon by DLW, vide their letter of November, 1966. The acceptance of the DLW's stand in this regard in the second arbitration case by the umpire while dealing with the firm's claims for the years 1968 and 1969 does not ipso facto prove the correctness of such stand for all past and future years.

Conclusions

Having gone through the available files, the Committee have come to the following conclusions:—

(i) Awarding the contract to Industral Cases Ltd.

There does not appar to have been any malafides in awarding the contract to the Industrial Gases Ltd. The Indian Oxygen Ltd. were contemplating supply of gases against DGS&D's Rate contract and do not appear to have had any intentions to set up a plant in or around DLW. They appear to have also gone for some tie up with the Indian Gases Ltd., who were trying to develop as a gas manufacturer. The Asiatic Oxygen Ltd. withdrew from the field. The offer of the Industrial Gases Ltd., an established source in the field, was thus welcome to the Administration. The only other option was to award the contract to the only other bidder, the Indian Air Gases Ltd., who were absolutely new in this field. The bonafides of the arrangement entered into by the Administration appear to be above board. The doubts and suspicions appear to be the result of certain technical requirements of laid down procedures having not been fully complied with while dealing with the matter, including the award of the contract, some of which are mentioned below:—

(a) The tenders received on different dates were considered without treating the tendders received at later dates as 'late' tenders.

(b) All discussions|negotiations with the bidders having not been conducted by the Tender Committee at the same time and in accordance with the established procedure.

The prescribed procedures for procurement are followed in normal purchases in well established offices. In this case, the DLW factory was in the formative stage. Procurement of Oxygen and DA gases, which are vital for DLW production, were of prime importance and it was necessary to ensure that contracts are entered into with reliable firms. As the history of the case would show, the number of firms interested in the field were very limited and the Administration had to adopt the necessary measures to ensure that the contract, with the most favourable terms, are secured for the Administration. The omissions and commissions (which are only of technical in nature) in this case have, therefore, to be viewed in this background. The Committee are of the view that the procedures adopted have arisen mainly out of the anxiety for putting the

new project on its feed, and do not see any malafide at any stage. It is also relevant to note that the location of the factoy is in an area, which is industrially backward and it would be difficult to get established parties to set up their units.

Purchases of this magnitude had to be dealt with by Heads of Departments' Tender Committee consisting of the Stores the consuming Department and Finance. While the FA&CAO and C.M.E. had dealt with it, as regardds the Stores representative, at that time there was only a Dy. Controller of Stores who was functioning under the administrative control of C.M.E. It was not, therefore, advisable for Dy. C.O.S. to be a member of the Tender Committee, along with C.M.E.

In the above background, it is to be noted that the DLW Administration had made the FA&CAO responsible for commercial work (contracts etc.),which is normally dealt with by the Controller of Stores. The FA&CAO normally acts as a second check on a contrat. Following this procedure, the second check was obviously diluted and resulted in certain ommissions.

The lease of land and extension of various other facilities like supply of water, electricity, use of roads etc. have to be considered in the overall context of consideration for the contract between two parties and the isolated surrounding in which the firm was setting up a plant with substantial investment, on the one hand and the DLW Administration's desire to have the gases available on their door-step.

(ii) Extension of the Contrat beyond 31.12.75

As brought out in para 8 above, the Administration could not have taken any other course of action.

(iii) Non-appointment of arbitrator in time

The non-appointment of arbitrator within the stipulated time appears to have been mainly due to the impression in the minds of the then General Manager and the FA&CAO, that the firm would be aggreeable to settle the disputes by mutual discusions. The General Manager, under whose direction the then FA&CAO dealt with the case, died long back. We cannot at this stage get any indication about his thinking. As far as the FACAO is concerned, the Committee are of the view that there is no malafide on his part. So far as legal expenses are concerned, the decision to go for filing

of suit was of the General Manager, **and not of the FA&CAO**, and considering the amount involved (Rs. 4.3 thousand), all that can be said is that sincere efforts were made to remedy the situation.

Sd/-	Sd/-	Sd/-
(M. S. Gill)	(D. J. De)	(S. B. J. Rajaiah)
Adviser (Finance)	Adviser (Industrial Relations)	ex-D.R.S. Rly.

Board and C.O.S. /JCF.

CHAPTER V

RECOMMENDATIONS OR OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

The Committee would also like to be apprised of the progress made in the other three arbitration cases now pending.

[S. No. 15 (Para 1.95) of Appendix to 136th Report of PAC (1978-79) (Sixth Lok Sabha)].

Action Taken

The 3rd, 4th and 5th Arbitration Cases are still in progress.

[Ministry of Railways (Railway Board) D.O. No. 79-BC-PAC-VI| 136 C1—15) dated 3 December 1979].

Recommendation

Another important matter raised in the Audit paragraph relates to the collapse of microwave towers, whose satisfactory performance had been guaranteed by the Belgium firm. In terms of the contract entered into in February 1970, the Belgium firm was entirely responsible for the satisfactory performance of the entire system as well as for the performance of the towers. The agreement further provided that since the entire responsibility for the design and guarantee of the performance of the towers rested with the contractor, there should be no need to approve the contractor's design. The detailed designs of towers were to be submitted to Northern Railway only for information and record. The Committee find that on 20 May 1976 one of the working towers collapse owing to heavy wind disrupting the microwave communication. A quick check of the other 23 towers on the link also revealed signs of distress and deformation on 13 towers. In August 1976, the Railway Board initiated action for replacement or strengthening of the towers and the firm was requested to take all necessary remedial measures free of cost. The firm repudiated their responsibility on the ground that the warranty period of 12 months commencing from the date of completion of the installation, namely 15 January 1973 expired on 15 January 1974 and

that during this warranty period no defects or any non-compliance with specifications or claims had been raised whatsoever in relation to the towers. The case was ultimately referred to the arbitration. The claim of the Railway amounts to Rs. 1,65,50,649. Since the Railway Board has claimed that the satisfactory performance of the system as well as of the towers was the responsibility of the firm, which had in fact been guaranteed by them, the Committee trust the Railway Administration would find it easy to be successful in arbitration. The Committee would therefore like to be apprised of the progress made in the arbitration proceedings.

[S. No. 23 (Para 2.87) of Appendix to 136th Report of PAC 1978-79 (Sixth Lok Sabha]

Action Taken

The present position is that Arbitrators from the Railway as well as firm's side, as also an Umpire, have since been appointed and the arbitration proceedings have started. Final outcome of the arbitration proceedings will be advised to the Committee as soon as the matter is decided.

[Ministry of Railways (Railway Board) O.M. No. 79-BC-PAC|VI| 136 (16—23) dated 21 January, 1980.]

NEW DELHI;

March 29, 1981

Chaitra 8, 1903 (S)

CHANDRAJIT YADAV,

Chairman,

Public Accounts Committee

APPENDIX

Conclusions|Recommendations

S. No.	Para No.	Ministry/Department concerned	Recommendations
1	2	3	4
1	1.13	Ministry of Railways (Railway Board)	The Committee hope that final replies to those recommendations or observations in respect of which only interim replies have been furnished so far will be submitted expeditiously after getting them vetted by Audit.
2	1.12	-do-	The Committee note that in pursuance of their recommendation, the Ministry of Railways appointed a departmental committee on 22 June, 1979 to investigate the whole case of the award, operation and extension of the contract entered into by Diesel Locomotive Works Administration with M/s. Industrial Gases Ltd. for the supply of oxygen and acetylene gases and the report of the enquiry was submitted to the Railway Board on 26 April, 1980. The departmental committee has come to the conclusion that no malafides were involved either in the award of the contract or in its operation or in its extension beyond 31 December, 1975.

3	1.13	-do-	After perusal of the report of the enquiry, which was furnished by the Ministry of Railways at the Committee's instance only, the Committee note that the departmental committee has pointed out certain lapses in the deal, some of which were already highlighted by the Public Accounts Committee in their earlier Report. The Committee would like to point out that the Ministry of Railways should have also incorporated in the action taken note those lapses pointed out by the departmental committee. For example, in paragraph 7 of their report the departmental committee has found that "it is true that the value of the various facilities made available to the Industrial Gases Ltd. was not evaluated in terms of money value and taken into account in working out the comparative position of the rates of the two firms finally left in the field" and "the availability of the source of Industrial Gases Ltd. close to the DLW plant as a long term source of supply of oxygen and DA gases appears to have no doubt influenced the Administration's thinking of going in for a plant of their own for such gases." It has also been pointed out by the departmental committee in the same paragraph that the Administration could have bargained in respect of certain facilities made available to M|s Industrial Gases Ltd. Further, in their report the enquiry committee has also concluded that certain technical requirements of laid down procedures were not fully complied with while dealing with the matter. The enquiry committee also observed that the FA&CAO, who 'normally acts as a second check on a contract" was made responsible for the commercial work (contracts etc.); the second check was thereby 'obviously diluted and resulted in certain omissions'.

1	2	3	4
4	1.14	Ministry of Railways (Railway Board)	The Committee regret that the action taken reply furnished by the Ministry of Railways does not make apparent reference at all to the above lapses pointed out by the departmental enquiry committee. The conclusion of the enquiry committee regarding the failure of DLW Admn. to appoint an Arbitrator in time has not also been properly brought out in the action taken reply. The conclusions of the enquiry committee have been indicated in the action taken reply as to include, *inter alia*, that 'except for an amount of Rs. 4.3 thousands the balance awarded by the Sole Arbitrator was in any case payable to the firm in terms of the various stipulations of the agreement with the firm'. However, from the report of the enquiry committee it is observed that they have concluded that out of Rs. 2.01 lakhs (including cost of suit etc.) awarded by the Sole Arbitrator, certain claims like rent on sylinders, price escalation, sales tax etc. were in any case payable to the firm in terms of the various stipulations of the agreement, while it cannot be said with any degree of certainly that the firm was not entitled to payment for the gas alleged to have been blown off in the air. The Committee take a serious view of this and desire that in future while furnishing informaton to the Committee the Ministry of Railways would take adequate care to ensure that the requisite information is correct and complete in all respects.
5	1.15	Ministry of Finance (Department of Expenditure) (Monitoring cell)	The Committee also recommend that whenever an Enquiry Committee is appointed by Government in pursuance of any recommen-

			dations of the Public Accounts Committee a copy of the report of such Enquiry Committee should invariably be furnished to the Committee immediately on its receipt without waiting for any reference from the Lok Sabha Secretariat. The Committee also recommend that while furnishing the action taken notes, the findings of the Enquiry Committee should be correctly reflected therein.
6	1.16	-do-	The Committee desire that the Ministry of Finance who have constituted a Monitoring Cell to monitor the implementation of recommendations of the Public Accounts Committee should issue general instructions to all the Departments to ensure the fulfilment of above objective.
7	1.17	Ministry of Railways (Railway Board)	The Committee in para 1.94 of the Report had desired that the responsibility for the failure in appointing an arbitrator within the stipulated time and the consequent wasteful legal expenditure thereon should be fixed. The Chairman, Railway Board had also conceded during the course of the evidence before the Committee that there had been negligence in this case. The Committee note that the departmental committee which looked into the matter has arrived at the conclusion that the non-appointment of arbitrator within the stipulated time appeared to have been mainly due to the impression in the minds of the then General Manager and the FA&CAO, that the firm would be agreeable to settle the disputes by mutual discussions. The Enquiry Committee have in their report stated that the General Manager, under whose direction the then FA&CAO dealt

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			with the case, died long back and it was his decision to go for filing of suit. According to the findings of the enquiry, there was no mala-fide on the part of FA&CAO. It, however, looks strange to this Committee as to how the FA&CAO could thus be completed exonerated as he was closely associated with the General Manager, at various stages of the deal.
8	1.18	Ministry of Railways (Railway Board)	The Committee desire that in the light of the lapses pointed out by the Committee and the findings of the departmental enquiry in this case, the Railway Board should issue necessary instructions to ensure that the interests of the Government are adequately safeguarded while entering into contracts of similar nature. The Committee also recommend that the Railway Board should ensure that the prescribed procedures are followed in settling disputes arising from the implementation of contracts and wasteful expenditure in arbitration cases is avoided.

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